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JORDAN SATHER, SARAH WESTALL

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JOHN DOE, an individual; MICHAEL  
DOE, an individual; JAMES DOE, an  
individual; HENRY DOE, an individual;  
ROBERT DOE, an individual;  
CHRISTOPHER DOE, an individual;  
MATHEW DOE, an individual; POLLY  
ST. GEORGE, an individual; SCOTT  
DEGROAT, an individual; DAVID J.  
HAYES, an individual; DANIEL LEE,  
an individual; MISHel McCUMBER, an  
individual; JEFF PEDERSEN, an  
individual; JORDAN SATHER, an  
individual; SARAH WESTALL, an  
individual,

Plaintiffs,

vs.

GOOGLE, LLC., a Delaware limited  
liability company; YOUTUBE LLC, a  
Delaware limited liability company;  
DOES 1 through 10, inclusive.

Defendants.

Case No. 5:20-cv-07502

Hon.

**APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND FOR  
ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS  
IN SUPPORT THEREOF;  
[PROPOSED] ORDER (lodged  
separately)**

Date Filed: October 26, 2020

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiffs JOHN DOE, MICHAEL DOE, JAMES DOE, HENRY DOE, ROBERT DOE, CHRISTOPHER DOE, MATTHEW DOE, POLLY ST. GEORGE, SCOTT DEGROAT, DAVID J. HAYES, DANIEL LEE, MISHEL McCUMBER, JEFF PEDERSEN, JORDAN SATHER, SARAH WESTALL by and through their counsel, will and hereby do apply to this Court pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule 65-1 for a temporary restraining order against Defendants GOOGLE, LLC., a Delaware limited liability company, and YOUTUBE LLC, a Delaware limited liability company, and for the issuance of an order to show cause why a preliminary injunction should not issue, as follows:

1. Defendants, along with their agents, employees, and successors, shall be restrained and enjoined from breaching their contract with Plaintiffs, as set forth in YouTube's Terms of Service, by keeping their channels in suspended or terminated status, or from suspending or terminating them any further for posting content to their YouTube channels that is not in violation of the Terms of Service existing on or before October 15, 2020;

2. Defendants shall show cause, at a time and place to be directed by the Court, why a preliminary injunction should not issue requiring Defendants to act as described above; the temporary restraining order shall remain in effect until such time as the Court has ruled on whether a preliminary injunction should issue.

This Application is made on the grounds that Plaintiffs are likely to succeed on the merits of this case, they will suffer irreparable harm without injunctive relief because there is no legal remedy that would address the issues of free speech, the balance of equities tips sharply in their favor, and the relief sought is decidedly in the public interest.

Good cause exists to issue the requested Order to preserve Plaintiffs' rights under the contract, which is and was always intended to facilitate Plaintiffs' use of the YouTube platform for the purpose, in Plaintiffs' case, of broadcasting political speech on matters of substantial public interest and importance. Without a temporary restraining order and preliminary injunction, Plaintiffs will suffer irreparable harm to their contractual rights and their right and

ability to engage in political speech. There is no remedy at law that could compensate the Plaintiffs, and the loss of their audience and their ability to speak cannot be adequately measured. This Application is supported by the accompanying Memorandum of Points and Authorities, by Plaintiffs' Complaint (and all exhibits attached thereto), by the declarations of Plaintiffs and their counsel, M. Cris Armenta, by the Declaration of Lindsey Crawly (and all exhibits attached thereto), and by the declarations of Lauren Gallo White, counsel to Google and YouTube, and by such further argument and evidence that may be adduced at any hearing on this matter or of which the Court may take judicial notice.

The Complaint in this action was filed on October 26, 2020, 2020; this Application followed. All papers relating to this Application will be delivered by email to Defendants' within 30 minutes of the uploading of this filing on October 27, 2020. As reflected in the accompanying declaration of M. Cris Armenta, Plaintiffs have notified counsel of their intention to file this Application and to seek a temporary restraining order of the nature described above. Plaintiffs request that the Court waive any bond requirement, because enjoining Defendants from violating their Terms of Service will not financially affect Defendants.

Respectfully submitted,

Dated: October 27, 2020

ARMENTA & SOL, PC

By: /s/ M. Cris Armenta

M. Cris Armenta

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**MEMORANDUM OF POINTS AND AUTHORITIES*****The United States House of Representatives Officially Condemns the “Ideology”  
and “Antigovernment” Stance of the “QAnon” Movement***

On October 2, 2020, the United States House of Representatives passed a resolution officially condemning “QAnon,” a blanket term that variously describes an Internet community, a group of conspiracy theorists, and/or an Internet poster whose views have been widely disseminated. In the resolution, Congress criticizes “QAnon” for, *inter alia*, its “ideology,” its “anti-government sentiment” and its potential to “deepen our Nation’s political polarization.” In part, the resolution reads as follows:

Resolved, That the House of Representatives—

- (1) Condemns QAnon and rejects the conspiracy theories it promotes;
- (2) condemns all other groups and ideologies, from the far left to the far right, that contribute to the spread of unfounded conspiracy theories ...

[...]

- (5) urges all Americans, regardless of our beliefs or partisan affiliation, to seek information from authoritative sources and to engage in political debate from a common factual foundation.

Declaration of M. Cris Armenta (“Armenta Decl.”), Ex. H. Within days, YouTube posted a blog post in which it stated:

*“Today we’re further expanding both our [hate](#) and [harassment](#) policies to prohibit content that targets an individual or group with conspiracy theories that have been used to justify real-world violence. One example would be content that threatens or harasses someone by suggesting they are complicit in one of these harmful conspiracies, such as QAnon or Pizzagate.”*

Armenta Decl. Ex. B,

**INTRODUCTION**

This lawsuit and request for an emergency injunction addresses YouTube’s October 15, 2020, purge of accounts in which YouTube abruptly deleted conservative content from its



platform and terminated the accounts and channels that had hosted that content. YouTube’s massive de-platforming, just three weeks before the 2020 Presidential election, worked to the severe detriment of both conservative content creators and American voters who seek out their content. YouTube took this draconian action so swiftly that the Plaintiffs, conservative content creators with whom YouTube had a contractual relationship memorialized by YouTube’s Terms of Service (“TOS”), received no advance notice and were not able to download their own content. Why did YouTube do this? To frustrate the contracts and to mollify its partner, Congress, which just days before had passed H.R. 1154, a resolution condemning the existence of conservative content—which it characterized as conspiracy theories—on the Internet.

Plaintiffs seek immediate and emergency relief from Defendants’ breaches of their contract with Plaintiffs, which worked to completely deny Plaintiffs the benefits of the contracts and services for which they bargained and to deprive both Plaintiffs and their subscribers of their First Amendment rights. Given that the Presidential election is approaching on November 3 and that Plaintiffs routinely provide news, commentary and information about issues that are directly relevant to that election, Plaintiffs seek immediate and emergency relief by way of a Temporary Restraining Order and/or Injunction to avoid irreparable harm that cannot be cured or later resolved through monetary damages alone.

## RELEVANT FACTUAL BACKGROUND

Brief Overview of Plaintiffs and Their Channels: The fifteen Plaintiffs are journalists, videographers, advocates, commentators and other individuals who regularly exercise their right to free speech under the First Amendment of the Constitution of the United States. (Compl. ¶ 1.) Plaintiffs created seventeen individual news channels and published those channels on the YouTube platform. (Compl. ¶ 1.) Plaintiffs’ videos had an enormous audience reach both in the United States and throughout the world. (Compl. ¶ 1.) On October 15, 2020, Plaintiffs’ reach was so widespread that they collectively had more than 4.5 million subscribers to their channels and had attracted more than 800 million views. (Compl. ¶ 1; Declaration of Lindsey Crawley, Ex. Q and Plaintiffs’ Declarations ¶ 3). Taken together, these subscriber counts far exceed the individual viewership of the YouTube accounts maintained by legacy

1 cable, journalism, and news networks such as C-SPAN (806K subscribers), *The New York*  
 2 *Times* (3.21M subscribers), Fox News (6.52M subscribers), MSNBC (3.62M subscribers),  
 3 NBC News (4.1M), and CBS News (3.06M subscribers). (Compl. ¶ 1.) Although it is clear  
 4 that millions of Americans get their news, information and commentary on issues of national  
 5 importance from the Plaintiffs' conservative channels, YouTube excised them and their  
 6 political viewpoints from the YouTube platform without notice, just days 19 before the 2020  
 7 presidential election. (Compl. ¶ 1; Plaintiffs' Decl. ¶ 4.)

8 YouTube is Becoming More Important than Television. YouTube is a popular online  
 9 service for sharing videos and related content. (Compl. ¶ 2.) YouTube activated its domain on  
 10 February 14, 2002. (Compl. ¶ 2.) The first YouTube video was published on April 23, 2005.  
 11 (Compl. ¶ 2.) On October 9, 2006, Google purchased YouTube for \$1.65 billion. (Compl.  
 12 ¶ 2.) By May 2010, YouTube served more than 2 billion views each day. (Compl. ¶ 2.) By  
 13 March 2013, YouTube was seeing 1 billion monthly active users. (Compl. ¶ 2.) According to  
 14 statistics published by Brandwatch, a leading social intelligence company, 6 out of 10 people  
 15 prefer online video platforms to live TV, and it is predicted that by 2025, half of the population  
 16 under the age of 32 will not subscribe to a pay-TV service. (Compl. ¶ 2.) YouTube is the  
 17 world's second-largest search engine and the world's second most-visited site (after Google).  
 18 (Compl. ¶ 2.) YouTube, which has 1.9 billion users, is the second most popular social media  
 19 platform in the United States and the world. (Compl. ¶ 2.) Quoting from the Pew Research  
 20 Center study, Brandwatch reports that one in five YouTube users say that YouTube is very  
 21 important to "understanding things happening in the world." See  
 22 <https://www.brandwatch.com/blog/youtube-stats/> (Compl. ¶ 2.)

23 Many Americans Get Their News from Independent YouTube Channels. According to  
 24 the Pew Research Center, a nonpartisan think tank based in Washington, D.C. that provides  
 25 information about social issues, public opinion and demographic trends shaping the United  
 26 States and the world, legacy and independent media are thriving side by side, and established  
 27 news organizations no longer have full control over the news Americans watch. (Compl. ¶ 3;  
 28 Armenta Decl. Ex. F.) Most YouTube news consumers view both legacy and independent

news videos on the platform. (Compl. ¶ 3.) Based on an extensive survey, the Pew Research Center confirms that independent news channels occupy a prominent position in YouTube’s media ecosystem. (Compl. ¶ 3.) The 377 most popular YouTube channels represent a mixture of established news organizations (49%) and independent channels (42%). See Stocking, Gale et al., “Many Americans Get News on YouTube, Where News Organizations and Independent Producers Thrive Side by Side,” Pew Research Center, Sept. 28, 2020, <https://www.journalism.org/2020/09/28/many-americans-get-news-on-youtube-where-news-organizations-and-independent-producers-thrive-side-by-side/>. (Compl. ¶ 3; Armenta Decl. ¶ F.)

YouTube Partners with Content Creators, Allowing Them to Create Channels and Publish Content Such as News Channels Pursuant to Their Terms of Service. To create a channel and post videos, Plaintiffs and YouTube agree that their relationship will be governed by YouTube’s published TOS and their incorporated Community Guidelines. (Compl. ¶ , White Decl. Ex. 1.) The TOS provide that “YouTube is under no obligation to host or serve Content.” (Compl. ¶ 4; White Decl. Ex. 1.) However, once YouTube actually hosts the content, YouTube and the creator agree to be bound by the TOS. (Compl. ¶ 4; White Decl. Ex. 1.) When the creator publishes content on YouTube, the terms of the TOS dictate the procedure for content removal and/or account termination. (Compl. ¶ 4; White Decl. Ex. 1.) The relevant ground rules are as follows:

*Accounts May be Removed at Any Time by Their Creators:* According to the TOS, content creators may remove their own content at any time: “Terminations by You. You may stop using the Service at any time. Follow these instructions to delete the Service from your Google Account, which involves closing your YouTube channel and removing your data. You also have the option to download a copy of your data first.” (Compl. ¶ 4; White Decl. Ex. 1.)

*YouTube May Terminate or Suspend an Account for Cause:* According to the TOS, YouTube may terminate a channel only in specified conditions: “YouTube may suspend or terminate your access, your Google account, or your Google account’s access to all or part of the Service if (a) you materially or repeatedly breach this Agreement; (b) we are required to do

1 so to comply with a legal requirement or a court order; or (c) we believe there has been conduct  
 2 that creates (or could create) liability or harm to any user, other third party, YouTube or our  
 3 Affiliates.” (Compl. ¶ 4.)

4 *YouTube Must Provide Notice of Terminations and Suspensions:* We will notify you  
 5 with the reason for termination or suspension by YouTube unless we reasonably believe that to  
 6 do so: (a) would violate the law or the direction of a legal enforcement authority, or would  
 7 otherwise risk legal liability for YouTube or our Affiliates; (b) would compromise an  
 8 investigation or the integrity or operation of the Service; or (c) would cause harm to any user,  
 9 other third party, YouTube or our Affiliates. Where YouTube is terminating your access for  
 10 Service changes, where reasonably possible, you will be provided with sufficient time to export  
 11 your Content from the Service.” (Emphasis added.) (Compl. ¶ 4.)

12 *The TOS Incorporate Community Guidelines:* YouTube’s Community Guidelines  
 13 include policies against harassment and cyberbullying, which prohibit content that “encourages  
 14 dangerous or illegal activities that risk serious physical harm or death.” See [https://support.  
 15 google.com/youtube/answer/2801964?hl=en&ref\\_topic=9282436](https://support.google.com/youtube/answer/2801964?hl=en&ref_topic=9282436). (Compl. ¶ 4; Declaration of  
 16 Lauren Gallo White (“White Decl.”)<sup>1</sup> ¶ 5 & Ex. 4. YouTube has provided a list of examples of  
 17 what types of content constitute “harassment and cyberbullying” for the purposes of its  
 18 Community Guidelines and TOS, including the following: (1) extremely dangerous challenges;  
 19 (2) dangerous or threatening pranks; (3) instructions to kill or harm; (4) hard drug use or  
 20 creation; (5) glorifying or encouraging eating disorders; (6) promoting or glorifying violent  
 21 events; (7) bypassing payment for digital content or services; and (8) promoting dangerous  
 22 remedies or cures. (*Id.*)

23 On October 15, 2020, YouTube Announced an Expansion of Its Hate and Harassment  
 24 Policies to Exclude Targeted Content “Used to Justify Real-world Violence,” But Did Not

25 \_\_\_\_\_  
 26 <sup>1</sup> Lauren Gallo White is counsel to Defendants in *Daniels v. Alphabet, et al.* Case No. 20-  
 27 cv004687-VKD and on August 20, 2020, provided all the Terms of Service (“TOS”) in  
 28 connection with that case; her declaration provides the Court a snapshot in time of YouTube’s  
 TOS and constitutes admissible evidence and admissions by the Defendants. (See generally  
 White Decl.) Plaintiffs have included only Ms. White’s exhibits that pertain to the TOS for this  
 action.

1 Actually Amend its TOS Consistent with its Announcement: On October 15, 2020, YouTube  
 2 posted a blog post in which it indicated that “Today, we are taking another step in our efforts to  
 3 curb hate and harassment by removing more conspiracy theory content used to justify real-  
 4 world violence.” See [https://blog.youtube/news-and-events/harmful-conspiracy-theories-](https://blog.youtube/news-and-events/harmful-conspiracy-theories-youtube)  
 5 [youtube](https://blog.youtube/news-and-events/harmful-conspiracy-theories-youtube). (Compl. ¶ 5; Armenta Decl. ¶ .) In the blog post, the YouTube Team stated that it  
 6 was “further expanding both our hate and harassment policies to prohibit content that targets an  
 7 individual or group with conspiracy theories that have been used to justify real-world  
 8 violence.” (Compl. ¶ 5.) Notably, however, with respect to the claimed amendment, YouTube  
 9 did not actually amend its Terms of Service in the manner it claimed on its blog prior to de-  
 10 platforming the Plaintiffs. (See Armenta Decl. ¶ C.) (Compl. ¶ 5.)

11 On October 15, 2020, YouTube Abruptly Instigated a Mass Purge of Conservative  
 12 Accounts, Including Those Operated by Plaintiffs, Based on Its “Hate and Harassment”  
 13 Policies, In a Manner That Violated the TOS: On October 15, 2020, YouTube terminated  
 14 and/or suspended Plaintiffs’ channels, rendering those channels unviewable, preventing  
 15 Plaintiffs from providing commentary and news on issues of national importance and  
 16 preventing Plaintiffs’ millions of viewers from accessing commentary and news that they are  
 17 interested in viewing. (Compl. ¶ 6; Crawley Decl. Ex. P.) YouTube violated its own provision  
 18 that states that if YouTube makes “Service changes,” the affected creators “will be provided  
 19 with sufficient time to export [their] Content from the Service.” (Compl. ¶ 6.) YouTube did  
 20 not provide Plaintiffs with any time, let alone “sufficient time,” to export their Content from the  
 21 YouTube platform. (Compl. ¶ 6; Plaintiffs’ Decl., each ¶ 4.) Many of the Plaintiffs could not  
 22 even take their previously posted work to alternative platforms for republication, and they also  
 23 lost contact with their millions of subscribers. (Compl. ¶ 6; Plaintiffs’ Decl. ¶ 4.) Moreover,  
 24 even Plaintiffs who did retain some access to their content were summarily deprived of the  
 25 benefits they had bargained and worked for—most significantly, a large audience built up over  
 26 many years that they now cannot effectively reach, and in many cases, cannot even contact  
 27 over other social media platforms, because those social media platforms are also purging  
 28

1 Plaintiffs' accounts and similarly situated persons. (See Plaintiffs' Declarations.) (Compl. ¶ 6;  
2 Plaintiffs' Decl. ¶¶ 3-4.)

3 YouTube Breached the TOS by Suspending/Terminating Accounts Without Cause:

4 YouTube breached the TOS because it suspended or terminated the accounts of the Plaintiffs  
5 despite the following facts: (a) the Plaintiffs, and each of them, did not repeatedly or materially  
6 or breach the Agreement with YouTube; (b) there was no legal requirement or court order with  
7 which YouTube had to comply by suspending or terminating the accounts; and (c) YouTube  
8 did not believe there was conduct that creates or could create liability or harm to any user or  
9 third party, YouTube or its affiliates. (Compl. ¶ 7; White Decl ¶ 2 & Ex. 1.)

10 YouTube Breached the TOS by Failing to Provide a Reason for Account

11 Suspension/Termination in Compliance with the TOS: YouTube breached the TOS because it  
12 failed to notify each of the Plaintiffs as to "the reason for termination of suspension" by  
13 YouTube. (Compl. ¶ 8; Plaintiffs' Decl ¶ 8.) The notices that YouTube provided to the  
14 Plaintiffs did not identify a specific reason for the termination or suspension of their contracts.  
15 (Compl. ¶ 8.) Instead, YouTube indicated only that there were two possible reasons and even  
16 with respect to those two reasons, YouTube did not indicate how the targeted accounts violated  
17 the TOS or incorporated Community Guidelines, stating only that "We'd like to inform you that  
18 due to repeated or severe violations of our Community Guidelines ([https://www.youtube.com/t/community\\_guidelines](https://www.youtube.com/t/community_guidelines)) your YouTube account [account name] has been suspended."  
19 (Compl. ¶ 8; Plaintiffs' Decl. ¶ 8.) While some of the Plaintiffs received this identical cut-and-  
20 paste language from the TOS and remain baffled about how their content is alleged to have  
21 been out of compliance and/or what specific content they posted gave rise to the claim that their  
22 content was violative of the Community Guidelines, other Plaintiffs received no notice  
23 whatsoever. (Compl. ¶ 8; Plaintiffs' Decl. ¶ 8.) Was it content about Hunter Biden and the  
24 Ukraine scandal or the ongoing corruption probe? (Compl. ¶ 8.) Was it content about social  
25 media censorship? (Compl. ¶ 8.) Was it content about anonymous posts on political issues by  
26 someone identifying themselves as "Q" and the persons who read and talk about those posts?  
27 (Compl. ¶ 8.) Was it posts about race relations or protests in America? (Compl. ¶ 8.) Again,  
28

1 Plaintiffs remain baffled as to what, specifically in their content led them to be part of the  
 2 massive de-platforming, other than the commonality that they are conservative news channels  
 3 with widespread audience reach. (Compl. ¶ 8; Plaintiffs’ Decl. ¶ 9.)

4 YouTube Violated California Contract Law by Amending the TOS in a Manner that  
 5 Frustrated Their Purpose: Even if YouTube were to allege that the new amended TOS  
 6 provisions discussed in its blog applied (even though they did not exist at the time) and it could  
 7 claim to use that amended policy to entitle YouTube to suspend or terminate Plaintiffs’  
 8 accounts, the amended TOS are invalid to the extent that they resulted in a termination of the  
 9 contracts between the Plaintiffs and YouTube because under California law, a party may not  
 10 invoke a unilateral right to amend a contract in a such a manner as to frustrate the purpose of  
 11 the contract. (Compl. ¶ 9; White Decl. ¶ 2 & Ex. 1.) Because YouTube gave no advance  
 12 notice of its policy, it did not provide Plaintiffs an opportunity to take down any violative  
 13 content so that they could maintain their contractual relationship with YouTube. (Compl. ¶ 9;  
 14 Plaintiffs’ Decl. ¶P 7-8.)

15 YouTube Engaged in State Action by Capitulating to Government Coercion to  
 16 Terminate Plaintiffs’ Accounts and Thus, Violated Plaintiffs’ Right to Free Speech Under the  
 17 First Amendment: YouTube “hopped to it” shortly after Congress passed H.R. 1154, a  
 18 resolution condemning the existence of a certain type of conservative content on social-media  
 19 platforms. (Compl. ¶ 10; Armenta Decl. ¶ 13 & Ex. L.) The bill was passed in a political  
 20 context in which representatives of the largest social-media platforms are regularly being  
 21 hauled in front of Congressional committees to answer for business practices related to data  
 22 collection and consumer privacy, powerful members of Congress have openly stated that social  
 23 media platforms could lose their immunity from suit under Section 230 of the Communications  
 24 Decency Act if they do not cooperate with the government, Supreme Court Justice Thomas has  
 25 issued a dissent from denial of certiorari indicating that the time is ripe for the Supreme Court  
 26 to entertain a case involving whether the lower courts have interpreted Section 230 too broadly,  
 27 and the Department of Justice (together with eleven states’ Attorney Generals) has filed a  
 28 blockbuster antitrust case seeking the breakup of behemoth Google. (Compl. ¶ 10; Armenta



Decl. ¶ 16 & Ex. O.) In other words, YouTube’s position and ability to do business going forward have become precarious indeed, especially if it refuses to “play ball” with powerful government officials who hold YouTube and Google’s very existence in their hands. (Compl. ¶ 10.) Plaintiffs contend that in this environment of coercion and pressure, YouTube’s termination of their accounts amounts to state action, rendering it vulnerable to a First Amendment challenge. (Compl. ¶ 10.)

If YouTube Engaged in State Action, Plaintiffs’ First Amendment Rights Have Been Violated: Because Plaintiffs are citizen journalists who regularly provide news reporting and political commentary to a wide audience of Americans who seek out Plaintiffs’ channels, the First Amendment rights of Plaintiffs’ right to speak and the public’s right to hear are directly implicated. (Compl. ¶ 11; Plaintiffs Decl. ¶ 5.) Because YouTube terminated and suspended Plaintiffs’ channels just 19 days before the November 3 election—and because many Americans have been engaged in early voting since October 15—a resolution of the propriety of YouTube’s account terminations and suspensions is urgently required. (Compl. ¶ 11; Because Plaintiffs are citizen journalists who regularly provide news reporting and political commentary to a wide audience of Americans who seek out Plaintiffs’ channels, the First Amendment rights of Plaintiffs’ right to speak and the public’s right to hear are directly implicated. (Compl. ¶ 11; Plaintiffs Decl. ¶ 5.) .) Plaintiffs seek specific performance of the TOS contract and seek immediate injunctive relief ordering YouTube to restore their channels to the condition in which they existed on October 15, 2020. (Compl. ¶ 11.) Because Plaintiffs’ channels address issues of public concern that are highly relevant to the November 3 election and its anticipated aftermath, and because Plaintiffs have been given no time to expeditiously find an alternative platform for the widespread dissemination of their speech, both Plaintiffs and the public will suffer irreparable harm in the absence of an immediate and affirmative injunction. (Compl. ¶ 11.)



The Plaintiffs' evidence, along with that of their expert analytics accumulator, Lindsey Crawley is summarized in the following table:

Plaintiff	Channel Name	Creation Date	Total Videos	Strike History	Subscribers	Total View Count
JOHN DOE	JustInformed Talk	1/15/2015	890	0	281,000	60,154,395
MICHAEL DOE	SGTreport2: *BACK UP channel*	1/26/2011	31	0	107,000	1,597,694
MICHAEL DOE	SGTreport	2/3/2007	1,492	0	630,000	130,503,359
JAMES DOE	X22Report	2/4/2013	3,721	0	952,000	292,569,198
HENRY DOE	SpaceShot76	12/15/2008	792	0	159,000	32,227,188
ROBERT DOE	TRUreporting	3/5/2015	864	0	216,000	23,626,051
CHRISTOPHER DOE	RedPill78	7/21/2006	800	0	270,000	48,764,950
MATHEW DOE	Edge of Wonder	12/6/2017	316	0	467,000	38,089,707
POLLY ST. GEORGE	Amazing Polly	3/9/2016	387	0	375,000	24,660,282
SCOTT DEGROAT	Woke Societies	4/27/2019	217	0	108,000	4,617,715
DAVID J. HAYES	prayingmedic	7/27/2010	475	0	391,000	40 million+
DANIEL LEE	dnajlion7	10/7/2007	2,652	0	113,000	28,361,823
DANIEL LEE	Daniel Lee	10/23/2019	84	0	30,300	999,348
MISHEL McCUMBER	DeceptionBytes	7/31/2011	1,030	0	69,200	18,239,613
JEFF PEDERSEN	IntheMatrixxx	7/11/2013	464	0	76,900	4,667,407
JORDAN SATHER	Destroying the Illusion	11/24/2016	796	0	238,000	35,050,517
JORDAN SATHER	Destroying the Illusion 2.0	2/24/2018	3	0	51,600	7,605
SARAH WESTALL	Sarah Westall	4/4/2012	669	0	125,000	15,367,956

**LEGAL STANDARD**

A temporary restraining order preserves the status quo and prevents irreparable harm until a hearing can be held on a preliminary injunction application. See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974). It may be issued without an opportunity to be heard by the opposing party where “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition,” and “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

The standards for issuing a temporary restraining order and a preliminary injunction are the same. See, e.g., Stuhlberg Int’l. Sales co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n.7 (9<sup>th</sup> Cir. 2001). The Ninth Circuit has established two sets of criteria for evaluating a request for injunctive relief. Earth Island Inst. v. United States Forest Serv., 351 F.3d 1291, 1297 (9<sup>th</sup> Cir. 2003). Under the “traditional” criteria, a plaintiff must show the following: (1) a strong likelihood of success on the merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest. See, e.g., Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Alternatively, a temporary restraining order or preliminary injunction may be appropriate when a movant raises “serious questions going to the merits” and the “balance of hardships tips sharply in the plaintiff’s favor,” provided that the plaintiff is able to show there is a likelihood of irreparable injury and that the injunction is in the public interest. All. For Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9<sup>th</sup> Cir. 2011).

**ARGUMENT**

**I. PLAINTIFFS ARE ENTITLED TO TEMPORARY AND PRELIMINARY  
INJUNCTIVE RELIEF**

**A. There is a Strong Likelihood that Plaintiffs Will Succeed in Proving Their  
Contract Claims**

Plaintiffs are likely to succeed on their contract claims, in which they allege that Defendants breached the Terms of Service when they summarily suspended and terminated Plaintiff's YouTube channels. The Terms of Service ("TOS") are clear, outlining only three "cause" instances for which Defendants may terminate or suspend channels:

"YouTube may suspend or terminate your access, your Google account, or your Google account's access to all or part of the Service if (a) you materially or repeatedly breach this Agreement; (b) we are required to do so to comply with a legal requirement or a court order; or (c) we believe there has been conduct that creates (or could create) liability or harm to any user, other third party, YouTube or our Affiliates."

So, according to YouTube's own TOS, the Plaintiff's channels could be deleted for only one of the three enumerated reasons. As set forth below, none of the three reasons apply:

**1. Plaintiffs Did Not Materially or Repeatedly Breach the Agreement**

The question under (a) is whether the Plaintiffs materially breached the TOS. A material breach occurs where the failure to perform "is so dominant or pervasive as in any real or substantial measure to frustrate the purpose of the contract." Aslan v. Sycamore Inv. Co. (In re Aslan), 909 F.2d 367, 370 (9th Cir. 1990) (quoting Superior Motels, Inc. v. Rinn Motor Hotels, Inc., 195 Cal. App. 3d 1032, 1051 (1987)). What is the purpose of the contract with YouTube? YouTube sets out the purpose of its service quite succinctly:

The Service allows you to discover, watch and share videos and other content, provides a forum for people to connect, inform, and inspire others across the globe, and acts as a distribution platform for original content creators and advertisers large and small.

(TOS “Our Service”). While YouTube cannot credibly back away from its statement of purpose, as a service that allows its users to discover, watch, share and provide a form, it will likely focus its efforts on attacking the Plaintiffs and their protected speech. It is anticipated that YouTube will provide this Court with snippets of the most inflammatory speech of the Plaintiffs, taken out of context, in order to persuade this Court that the Plaintiffs are bad, that their speech is bad, and that somehow, they are not entitled to use the “forum for people to connect, inform and inspires others across the globe.” In other words, Plaintiffs predict that YouTube will claim that they spread disinformation, ask questions about topics that are too sensitive or polarizing, spread false rumors or are somehow psychically, tangentially and amorphously “linked” to questioning whether government officials or other high profile persons are connected to corruption or criminal acts such as sex trafficking, and that once upon a time, someone who watched something once shot up a pizza parlor on Washington, D.C. YouTube is anticipated to attack Plaintiffs’ speech, primarily because they do not like it and because certain members of Congress have told them that Plaintiffs’ speech is the type that is disfavored. It may be a challenge to put aside YouTube’s anticipated viewpoint-attack<sup>2</sup> on Plaintiffs’ speech, but it is the TOS that governs the issue, not YouTube nor the Court’s distaste for it. The question then becomes, does the publication of what YouTube will inevitably call “bad speech” suffice to be a “material” breach of the TOS?

One might look to the comments of the former Google CEO, Eric Schmidt for guidance. When actress Cindy Garcia attempted to force Google to take down the “Innocence of Muslims YouTube” video that was blamed on sparking the Benghazi incident and violent protests globally and she was issued credible and direct death threats, CEO Eric Schmidt’s response was “Google has a fairly clear view of this is that we believe that the answer to bad speech is more speech and we have very distinct policies about what we accept and what we don’t.” Google took the case to the Ninth Circuit *en banc* and as it stated in its papers:

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<sup>2</sup> “I disapprove of what you say, but I will defend to the death your right to say it.” (Hall, Evelyn Beatrice, *THE FRIENDS OF VOLTAIRE* (1906) (quoting or paraphrasing Francois-Marie Arouet, known by his *nom de plume* Voltaire).

1 It is indisputable that the Film is expressive speech, fully protected under the First  
 2 Amendment, and it has become the catalyst for even more expressive speech—  
 3 indeed, it is the subject of heated debate throughout the nation and around the  
 4 world. This very lawsuit together with Appellant’s many public appearances have  
 5 only added another layer of discourse to an already important public debate.

6 Google also quoted Justice Brandeis, who nearly a century ago, wrote: “If there be time to  
 7 expose through discussion the falsehood and fallacies, to avert the evil by the processes of  
 8 education, the remedy to be applied is more speech, not enforced silence. Only an emergency can  
 9 justify repression.” Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

10 In answering the question before the Court—is Plaintiffs’ speech a **material** violation of  
 11 the TOS?— the answer is another question: Isn’t the very purpose of the contract to support the  
 12 free exchange of ideas and debate? Isn’t the answer to bad speech, well, more speech? What is  
 13 the “heart” of the Agreement? Notably, it is difficult to address the materiality, because  
 14 YouTube did not give the Plaintiffs notice of *what specific speech in their content constituted a*  
 15 *violation*. YouTube merely parroted its own TOS, stating that the terminations were due to  
 16 “material or repeated violations” of the TOS. Well, which was it? Was it a material violation or  
 17 was it a repeated violation?

18 When it comes to repetition, the Plaintiffs do not have a history of multiple strikes.  
 19 YouTube uses a “strike” system, by which it issues either a Community Guidelines “strike” or a  
 20 copyright “strike.” Under YouTube’s strike system, a first strike will result in disabling certain  
 21 features for a week. A second strike during the same 90-day period will result in an inability to  
 22 post content for 2 weeks. A third strike “in the same 90-day period as your first strike will result  
 23 in your channel being permanently removed.” YouTube also notes that “each strike expires in  
 24 90 days from the time it’s issued ...” (TOS.) When it comes to the fifteen Plaintiffs, the  
 25 evidence provided by the Plaintiffs shows that they did not have repeated violations during the  
 26 90-day period preceding October 15, 2020, sufficient to trigger YouTube’s “three-strike”  
 27 threshold for termination. (Plaintiffs Decl. ¶ 6.) Accordingly, there were no “repeated  
 28 violations” for any of them under YouTube’s “three-strike” policy that warranted channel

deletion. If anyone materially breached the contract, it was YouTube, by deleting the Plaintiffs' channels in violation of their own TOS and strike system and by failing to give Plaintiffs sufficient notice to download their content.

**B. Plaintiffs Face Imminent Irreparable Harm Absent Immediate Injunctive Relief**

The contract at issue in this case—to wit, YouTube's TOS—has been breached in a manner that cannot be adequately compensated through money damages. The gravamen of the TOS is the agreement between YouTube and its users by which the users contribute content in exchange for YouTube providing a platform for the broadcast of that content. Here, Plaintiffs' content is political speech implicating issues that are a matter of widespread public interest notwithstanding the fact that Plaintiffs' political views are extremely controversial. In this lawsuit, the benefit of the bargain that Plaintiffs seek to obtain is the restoration of their access to the YouTube platform so that they can continue to speak out on current events to their millions of followers. YouTube's purge of Plaintiffs' accounts has caused and will continue to cause irreparable harm, as Plaintiffs are no longer able to communicate with the YouTube audience that they have spent years developing—in reliance on the contract with YouTube whereby YouTube promised access to the platform. Money damages one year, two years, or five years from now cannot restore Plaintiffs' ability to speak out during a hotly contested presidential election to YouTube users who want to hear what they have to say.

The law of injunctions as it pertains both to breach of contract cases and to freedom of expression cases is pertinent, as the reason Plaintiffs entered into the contract with YouTube was to obtain a platform where they could express their views. This Court has long recognized that in contract cases in which an ongoing breach will cause an injury that cannot be compensated by money damages, an injunction is appropriate. See, e.g., Kaiser Trading Co. v. Associated Metals & Minerals Corp., 321 F.Supp. 923, 934-35 (N.D. Cal. 1970) (granting preliminary injunction in case involving the breach of a sales contract); John Goyak, Inc. v. Terhune, 2008 WL 4832265 (9<sup>th</sup> Cir. Nov. 6, 2008) (affirming issuance of preliminary injunction where plaintiff demonstrated a combination of probable success on the merits of a

breach of contract claim and the possibility of irreparable injury absent a preliminary injunction). Irreparable harm may be present in a breach of contract case. See, e.g., Cazorla v. Hughes, 2014 WL 12235425, at \*18–21 (C.D. Cal. Apr. 7, 2014); Google, Inc. v. Jackman, 2011 WL 3267907, at \*5 (N.D. Cal. July 28, 2011); see also Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991) (noting that “economic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award,” but intangible injuries that may also arise out of a contractual breach may constitute irreparable harm).

Furthermore, in cases where the First Amendment is implicated, the Supreme Court has made it clear that interference with freedom of speech “unquestionably constitutes irreparable injury” for the purposes of a preliminary injunction. College Republicans at San Francisco State University v. Reed, 523 F.Supp.2d 1005, 1011 (N.D. Cal. 2007). In CBS, Inc. v. Davis, 510 U.S. 1315 (1994), the United States Supreme Court stayed an injunction that prohibited a broadcast of a video exposing a meat packing plant’s practices because “indefinite delay of the broadcast will cause irreparable harm to the news media that is intolerable under the First Amendment.” 510 U.S. 1315 (1994). “Unlike a monetary injury, violations of the First Amendment ‘cannot be adequately remedied through damages.’” Americans for Prosperity Foundation v. Harris, 182 F.Supp.2d 1049, 1058 (C.D. Cal. 2016) (citing Stormans, Inc. v. Selecky, 586 F.3d 1109, 1138 (9<sup>th</sup> Cir. 2009).) Because delay of the speech of the Plaintiffs’ content is *intolerable* under the First Amendment, irreparable harm is ongoing at this moment and must be immediately stopped.

Without an injunction preventing Defendants from further violating the TOS, Plaintiffs will suffer irreparable harm in that they are being deprived—during a time of widespread social and political unrest—of their ability to communicate their views to the audiences that they have spent a very long time building. As the Supreme Court, squelching the speech of the press is “intolerable.” This type of harm cannot adequately be compensated by damages or any other remedy available at law. Thus, irreparable injury is clearly shown, necessitating the relief Plaintiffs seek in this application.



1           **C.     The Balance of Hardships Tips Decidedly in Plaintiffs’ Favor**

2           The balance of hardships tips decidedly in favor of the Plaintiffs, who built up their vast  
3 audiences over a long period of time in reliance of the TOS which outlined very clearly the  
4 circumstances under which their channels might be deleted. The very purpose of the  
5 relationship between YouTube and the Plaintiffs is for the wide and rapid dissemination of  
6 speech on issue of national importance and central to the core of political debate.

7           By contrast, temporarily enjoining Defendants’ continued breach of the TOS will not  
8 result in hardship to Defendants, who will merely be required to provide the same platform  
9 access to Plaintiffs that they have been providing for years. Provision of this access will not  
10 result in Defendants incurring any cost or suffering any intangible harm. Defendants will  
11 suffer no legitimate harm by continuing to accord Plaintiffs the same platform access that they  
12 accord to the rest of their user base while this matter is adjudicated.

13           **D.     Injunctive Relief is in the Public Interest**

14           The public interest is served when parties perform as promised under their contracts.  
15 Blizzard Entm’t. Inc. v. Ceiling Fan Software LLC, 28 F.Supp.3d 1006, 1018-1019 (C.D. Cal.  
16 2013) (issuing injunction in case involving breach of contract and tortious interference claims  
17 by producer of online role-playing game against software company that developed programs  
18 designed to permit players to cheat). Furthermore, it is well recognized that there is a  
19 “significant public interest” in upholding First Amendment principles. Americans for  
20 Prosperity Foundation, 182 F.Supp.3d at 1059. As discussed above, Plaintiffs’ contractual  
21 rights—which implicate their ability to express themselves freely and participate in the public  
22 debate—will remain in jeopardy so long as Defendants remain free to violate their TOS at will.  
23 Accordingly, the issuance of injunctive relief is proper, and the Court should grant this  
24 Application.

25           **II.     THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT**

26           Rule 65(c) of the Federal Rules of Civil Procedure provides that a TRO or preliminary  
27 injunction may be issued “only if the movant gives security in an amount that the court  
28 considers proper to pay the costs and damages sustained by any party found to have been



wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). However, the Court has discretion as to whether any security is required and if so, the amount thereof. See, e.g., Jorgensen v. Cassidy, 320 F.3d 906, 919 (9<sup>th</sup> Cir. 2003).

Plaintiffs request that the Court waive any bond requirement because enjoining Defendants from continuing to violate their TOS will not financially affect Defendants. A bond would, however, be burdensome on the (already burdened) Plaintiffs under these circumstances.

### CONCLUSION

Plaintiffs respectfully request that this Court grant Plaintiffs’ motion for a temporary restraining order and issue an order to show cause why a preliminary injunction should not issue as follows:

1. Defendants, along with their agents, employees, and successors, shall be restrained and enjoined from breaching their contract with Plaintiffs, as set forth in YouTube’s Terms of Service, by taking down their videos and/or YouTube channels that discuss, analyze, or mention “QAnon.”
2. Defendants shall show cause, at a time and place to be directed by the Court, why a preliminary injunction should not issue requiring Defendants to act as described above; the temporary restraining order shall remain in effect until such time as the Court has ruled on whether a preliminary injunction should issue.

Respectfully submitted,

Dated: October 27, 2020

ARMENTA & SOL, PC

By: /s/ M. Cris Armenta

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**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within action. My business address is ARMENTA & SOL, APC, 11440 West Bernardo Court, Suite 300, San Diego, California 92127. On October 27, 2020, I served on the persons set forth below the following documents by email, within 30 minutes of the completion of this filing, and also left a telephone message for counsel David Kramer, Lauren Gallo White and Kelly Knoll that the injunction would be in their email and to call if they did not receive the link to the papers.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR ORDER TO  
SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE;  
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS; [PROPOSED]  
ORDER GRANTING APPLICATION FOR TEMPORARY RESTRAINING ORDER**

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Counsel for Defendants

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 27, 2020, at San Diego, California.

/s/ M. Cris Armenta

M. Cris Armenta